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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,124	07/21/2003	Craig H. Labovitz	A0781-700719	8033
37462	7590	12/31/2007	EXAMINER	
LOWRIE, LANDO & ANASTASI, LLP			LEE, CHI HO A	
ONE MAIN STREET, SUITE 1100			ART UNIT	
CAMBRIDGE, MA 02142			PAPER NUMBER	
			2616	
NOTIFICATION DATE		DELIVERY MODE		
12/31/2007		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@ll-a.com  
gengelson@ll-a.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/624,124	LABOVITZ, CRAIG H.
	Examiner Andrew Lee	Art Unit 2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 September 2007.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-28 and 30-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-28 and 30-34 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-15, 19-20, 28, 30-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Murooka et al PG-PUB 2003/0202471.

Re Claims 1, 28, fig. 2 teaches a Périodic Reading part 33 (obtaining control information) coupled to Storing Part 35 (database, status information) for storing information relating Comparing Part 71 (See fig. 10); 71 compares the network characteristics (data transmission information) to determine traffic quality [0063] wherein the comparison is displayed, See fig. 17.

Re Claims 2, 30, refer to Claim 1, wherein fig. 17 shows the observation of changes in each periodic intervals (change in control information) correlated by the Traffic Quality Measurement Apparatus 60 of fig. 7.

Re Claim 3, See fig. 17.

Re Claims 4, 31, refer to Claim 1, wherein traffic quality is measured by correlating each time interval with the traffic characteristic.

Re Claim 5, refer to Claim 1, wherein this information is stored in Storing Part 35.

Re Claims 6, 10, 11, refer to Claim 1, fig. 17 discloses the causal effect of network characteristic on each time interval.

Re Claim 7, refer to Claim 1.

Re Claim 8, refer to Claim 1, wherein 33 is periodic time interval (timestamp).

Re Claim 9, refer to Claim 1, storing the information in 33 is stored as a record.

Re Claims 12, 13, refer to Claim 1, wherein the network characteristic based on user.

Re Claim 14, refer to Claim 1, wherein fig. 13 teaches FLOW ID (one network route) associated with source address.

Re Claims 15, 32-34, refer to Claim 1, Fig. 17 discloses resources in a network between apparatus A and B (one or more entities; distributed in a communication network; forwarding nodes).

Re Claims 19, 20, refer to Claim 1, wherein fig. 18 teaches the adjustment of the streaming distribution using the traffic quality measurement.

Re Claim 21, refer to Claim 1, wherein adjustment made by the traffic quality measurement is based on the comparison/correlation.

Re Claim 22, refer to Claim 1, wherein the monitoring function is passive.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 16-18, 23-27, are rejected under 35 U.S.C. 103(a) as being unpatentable over Murooka et al PG-PUB 2003/0202471 in view of Ogielski et al PG-PUB 2004/0221296.

Re Claims 16-18, Murooka et al fails to explicitly teach the “control information” includes routing information. However Ogielski et al teaches a database for updating routing information for monitoring the condition of the network [0044]. One skilled in the art would have been motivated to modify Murooka et al to include updating routing information of Ogielski to determine the network performance. Therefore, it would have been obvious to one skilled to combine the references.

Re Claims 23-27, refer to Claim 16, wherein the Link state information is transmitted over the network.

***Response to Arguments***

5. Applicant's arguments with respect to claims 1-28, 30-34 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Lee whose telephone number is 571-272-3130. The examiner can normally be reached on Monday to Friday from 8:30AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Firman Backer can be reached on 571-272-6703. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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ANDREW C. LEE  
PRIMARY PATENT EXAMINER